

## **TITLE 85 BUDGET AGENCY**

### **ARTICLE 1. WASTEWATER STATE REVOLVING FUND**

#### **Rule 1. Purpose**

##### **85 IAC 1-1-1 Purpose**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 1. The purpose of this article is to implement the wastewater state revolving fund (SRF) established by IC 13-18-13 and accomplish the following:

- (1) Facilitate statewide compliance with state and federal water quality standards through construction of treatment works.
- (2) Provide political subdivisions in Indiana with low-cost financial assistance in order to construct necessary and environmentally sound treatment works.
- (3) Establish a fiscally self-sufficient program as a continuing source of funding for improvement and protection of water quality and public health.
- (4) Conduct any other activity permitted by the Clean Water Act.

*(Budget Agency; 85 IAC 1-1-1; filed Aug 28, 1998, 4:48 p.m.: 22 IR 6)*

#### **Rule 2. Definitions**

##### **85 IAC 1-2-1 Applicability**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 1. The definitions in this rule apply throughout this article. *(Budget Agency; 85 IAC 1-2-1; filed Aug 28, 1998, 4:48 p.m.: 22 IR 6)*

##### **85 IAC 1-2-2 “Agency” defined**

Authority: IC 13-18-13

Affected: IC 4-12-1-3; IC 13-11-2

Sec. 2. “Agency” means the budget agency created under IC 4-12-1-3. *(Budget Agency; 85 IAC 1-2-2; filed Aug 28, 1998, 4:48 p.m.: 22 IR 6)*

##### **85 IAC 1-2-3 “Authorized representative” defined**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 3. “Authorized representative” means a person who has been designated by the governing board of a political subdivision to sign documents on behalf of that board. *(Budget Agency; 85 IAC 1-2-3; filed Aug 28, 1998, 4:48 p.m.: 22 IR 6)*

##### **85 IAC 1-2-4 “Best management practice” defined**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 4. “Best management practice” means a practice or combination of practices which have been determined to be the most effective and practicable means of preventing or reducing water pollution to a level compatible with water quality goals. *(Budget Agency; 85 IAC 1-2-4; filed Aug 28, 1998, 4:48 p.m.: 22 IR 6)*

**85 IAC 1-2-5 “Board” defined**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 5. “Board” means the governing body of the political subdivision seeking financial assistance. *(Budget Agency; 85 IAC 1-2-5; filed Aug 28, 1998, 4:48 p.m.: 22 IR 6)*

**85 IAC 1-2-6 “Bond” defined**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 6. “Bond” is the debt instrument which evidences the long term financing undertaken by a political subdivision in accordance with Indiana statutes for incurring debt. *(Budget Agency; 85 IAC 1-2-6; filed Aug 28, 1998, 4:48 p.m.: 22 IR 6)*

**85 IAC 1-2-7 “Clean Water Act” defined**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 7. “Clean Water Act” means the Water Pollution Control Act, 33 U.S.C. 1251 et seq., in effect on January 1, 1989, and amended on December 16, 1996\*.

\*The Clean Water Act may be found at 33 U.S.C. 1251 and is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Management, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana 46206. *(Budget Agency; 85 IAC 1-2-7; filed Aug 28, 1998, 4:48 p.m.: 22 IR 6)*

**85 IAC 1-2-8 “Commissioner” defined**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 8. “Commissioner” means the commissioner of the department of environmental management. *(Budget Agency; 85 IAC 1-2-8; filed Aug 28, 1998, 4:48 p.m.: 22 IR 7)*

**85 IAC 1-2-9 “Department” defined**

Authority: IC 13-18-13

Affected: IC 13-11-2; IC 13-13-1-1

Sec. 9. “Department” means the Indiana department of environmental management created under IC 13-13-1-1. *(Budget Agency; 85 IAC 1-2-9; filed Aug 28, 1998, 4:48 p.m.: 22 IR 7)*

**85 IAC 1-2-10 “Due diligence” defined**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 10. “Due diligence” means a process that provides financial disclosure, advising the state of economic matters related to the political subdivision and their ability to repay the loan. *(Budget Agency; 85 IAC 1-2-10; filed Aug 28, 1998, 4:48 p.m.: 22 IR 7)*

**85 IAC 1-2-11 “EA” defined**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 11. "EA" means an environmental assessment that is a document prepared by the department upon completion of a preliminary engineering report that:

- (1) describes the possible treatment works alternatives;
- (2) describes the potential environmental impacts of the feasible alternatives;
- (3) acts as a public record of the documentation and review process used to arrive at a preliminary decision as to whether an environmental impact statement is necessary; and
- (4) provides information adequate for the public to comment on the proposed project.

*(Budget Agency; 85 IAC 1-2-11; filed Aug 28, 1998, 4:48 p.m.: 22 IR 7)*

**85 IAC 1-2-12 "EIS" defined**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 12. "EIS" means an environmental impact statement which is a document prepared if it is determined by the department that the construction or operation, or both, of a proposed treatment works will result in significant environmental impacts. The purpose, content, and format of an EIS shall be in accordance with 327 IAC 11-2-3(b)(1) through 327 IAC 11-2-3(b)(2). The preparation of an EIS shall be the responsibility of the department. *(Budget Agency; 85 IAC 1-2-12; filed Aug 28, 1998, 4:48 p.m.: 22 IR 7)*

**85 IAC 1-2-13 "Financial assistance" defined**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 13. "Financial assistance" means the types of financial assistance authorized by the Clean Water Act, 33 U.S.C. 1381 et seq. *(Budget Agency; 85 IAC 1-2-13; filed Aug 28, 1998, 4:48 p.m.: 22 IR 7)*

**85 IAC 1-2-14 "Financial assistance agreement" defined**

Authority: IC 13-18-13

Affected: IC 4-13-2-14.1; IC 13-11-2

Sec. 14. "Financial assistance agreement" means a contract document approved pursuant to IC 4-13-2-14.1 that contains the covenants between the political subdivision, and agency concerning receipt of financial assistance from the wastewater SRF. *(Budget Agency; 85 IAC 1-2-14; filed Aug 28, 1998, 4:48 p.m.: 22 IR 7)*

**85 IAC 1-2-15 "Financial assistance closing" defined**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 15. "Financial assistance closing" means the occasion in which a political subdivision tenders its note, bond, guaranty agreement, or credit enhancement agreement to the agency, and the agency provides a portion, or all, of the wastewater SRF financial assistance to the political subdivision. *(Budget Agency; 85 IAC 1-2-15; filed Aug 28, 1998, 4:48 p.m.: 22 IR 7)*

**85 IAC 1-2-16 "FNSEI" defined**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 16. "FNSEI" means a finding of no significant environmental impact which is a finding of the department, issued with an EA, that the construction and operation of a proposed treatment works will not significantly impact the environment. *(Budget Agency; 85 IAC 1-2-16; filed Aug 28, 1998, 4:48 p.m.: 22 IR 7)*

**85 IAC 1-2-17 “Hardship grant” defined**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 17. “Hardship grant” means a federal grant to provide assistance to improve wastewater treatment services in small, economically disadvantaged rural communities where such services are currently inadequate. (*Budget Agency; 85 IAC 1-2-17; filed Aug 28, 1998, 4:48 p.m.: 22 IR 7*)

**85 IAC 1-2-18 “IUP” defined**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 18. “IUP” means an intended use plan identifying the intended uses of the state revolving fund and describing how those uses support the goals of the program. (*Budget Agency; 85 IAC 1-2-18; filed Aug 28, 1998, 4:48 p.m.: 22 IR 7*)

**85 IAC 1-2-19 “Loan” defined**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 19. “Loan” means purchasing the notes or bonds of a political subdivision to finance a treatment works or refinancing an existing debt obligation where debt was incurred and building began after March 7, 1985, as opposed to providing other types of financial assistance eligible under the Clean Water Act. (*Budget Agency; 85 IAC 1-2-19; filed Aug 28, 1998, 4:48 p.m.: 22 IR 8*)

**85 IAC 1-2-20 “Operation and maintenance” defined**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 20. “Operation and maintenance” includes the activities required to assure the continuing dependable and economic function of the treatment works, including maintaining compliance with National Pollutant Discharge Elimination System permits, as follows:

(1) Operation is the control and management of the unit processes and equipment which make up the treatment works. This includes financial and personnel management, records, reporting, laboratory control, process control, safety and emergency operation planning, and operating activities.

(2) Maintenance is the preservation of the functional integrity and efficiency of equipment and structures by maintaining systems of preventive and corrective maintenance (includes replacement).

(*Budget Agency; 85 IAC 1-2-20; filed Aug 28, 1998, 4:48 p.m.: 22 IR 8*)

**85 IAC 1-2-21 “Political subdivision” defined**

Authority: IC 13-18-13

Affected: IC 13-11-2-164

Sec. 21. “Political subdivision” has the meaning set forth in IC 13-11-2-164. (*Budget Agency; 85 IAC 1-2-21; filed Aug 28, 1998, 4:48 p.m.: 22 IR 8*)

**85 IAC 1-2-22 “PPL” defined**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 22. “PPL” means a project priority list which is generated through the department and updated annually and amended

quarterly. It ranks, in descending priority of need, political subdivisions which have indicated a need for the construction of treatment works. (*Budget Agency; 85 IAC 1-2-22; filed Aug 28, 1998, 4:48 p.m.: 22 IR 8*)

**85 IAC 1-2-23 “Preliminary engineering report” defined**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 23. “Preliminary engineering report” means the document submitted by the political subdivision that provides the information necessary for the department to determine the technical, economic, and environmental adequacy of the proposed treatment works. (*Budget Agency; 85 IAC 1-2-23; filed Aug 28, 1998, 4:48 p.m.: 22 IR 8*)

**85 IAC 1-2-24 “Program” defined**

Authority: IC 13-18-13

Affected: IC 13-11-2-172

Sec. 24. “Program” means the wastewater revolving loan program as defined in IC 13-11-2-172. (*Budget Agency; 85 IAC 1-2-24; filed Aug 28, 1998, 4:48 p.m.: 22 IR 8*)

**85 IAC 1-2-25 “Project” defined**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 25. “Project” means the activities or tasks the department identifies in the preliminary engineering report for which the political subdivision may commit and expend funds. (*Budget Agency; 85 IAC 1-2-25; filed Aug 28, 1998, 4:48 p.m.: 22 IR 8*)

**85 IAC 1-2-26 “ROD” defined**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 26. “ROD” means a record of decision which is a statement issued by the department upon the completion of an EIS which includes a determination of whether to proceed with a proposed project. (*Budget Agency; 85 IAC 1-2-26; filed Aug 28, 1998, 4:48 p.m.: 22 IR 8*)

**85 IAC 1-2-27 “Sewer charge system” defined**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 27. “Sewer charge system” means a set of documents submitted by the political subdivision to the agency that includes a rate study, sewer rate ordinance, and any interlocal agreements or contracts that will determine the financial and legal capability associated with the operation and use of the treatment works project financed by the wastewater SRF. (*Budget Agency; 85 IAC 1-2-27; filed Aug 28, 1998, 4:48 p.m.: 22 IR 8*)

**85 IAC 1-2-28 “Substantial completion of construction” defined**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 28. “Substantial completion of construction” means the date determined by the department when all but minor components of a project have been built, all equipment is operational, and the project is capable of functioning as designed. (*Budget Agency; 85 IAC 1-2-28; filed Aug 28, 1998, 4:48 p.m.: 22 IR 8*)

**85 IAC 1-2-29 “Substantive environmental impact” defined**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 29. “Substantive environmental impact” means a significant adverse change in the environment resulting directly or indirectly from the construction, operation, upgrade, or expansion of a treatment works. (*Budget Agency; 85 IAC 1-2-29; filed Aug 28, 1998, 4:48 p.m.: 22 IR 9*)

**85 IAC 1-2-30 “Treatment works” defined**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 30. “Treatment works” means any devices and systems for storage, transport, treatment, recycling, and reclamation of municipal sewage, domestic sewage, or liquid industrial wastes used to implement the Clean Water Act, or necessary to recycle or reuse water at the most economical cost over the design life of the works. These include one (1) or all of the following:

(1) Intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power, and other equipment and their appurtenances.

(2) Extensions, improvements, remodeling, additions, and alterations thereof.

(3) Elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities.

(4) Any works, including the land that will be an integral part of the treatment process or is used for ultimate disposal of residue resulting from such treatment (including land for composting sludge, temporary storage of such compost, and land used for the storage of treated wastewater in land treatment systems before land application).

(5) Any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined storm water and sanitary sewer systems.

(*Budget Agency; 85 IAC 1-2-30; filed Aug 28, 1998, 4:48 p.m.: 22 IR 9*)

**85 IAC 1-2-31 “Wastewater SRF” defined**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 31. “Wastewater SRF” means the wastewater state revolving fund as authorized by the Clean Water Act, 33 U.S.C. 1381 et seq., and IC 13-18-13. (*Budget Agency; 85 IAC 1-2-31; filed Aug 28, 1998, 4:48 p.m.: 22 IR 9*)

**Rule 3. Uses of the Wastewater State Revolving Fund**

**85 IAC 1-3-1 Wastewater SRF program expenditures**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 1. The wastewater SRF shall be used to do the following:

(1) Provide financial assistance for the construction of treatment works projects and all other activities that are permitted by the Clean Water Act.

(2) Refund outstanding indebtedness of political subdivisions eligible for repurchase by the agency under the Clean Water Act.

(3) Pay reasonable direct and indirect program administration costs.

(*Budget Agency; 85 IAC 1-3-1; filed Aug 28, 1998, 4:48 p.m.: 22 IR 9*)

**Rule 4. Criteria for Determining Financial Assistance Eligibility**

**85 IAC 1-4-1 Project priority list**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 1. The agency shall award wastewater SRF financial assistance for treatment works projects and any other projects covered under the Clean Water Act to a political subdivision only for eligible costs of projects listed on the department's PPL. *(Budget Agency; 85 IAC 1-4-1; filed Aug 28, 1998, 4:48 p.m.: 22 IR 9)*

**85 IAC 1-4-2 Intended use plan**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 2. (a) The department and the agency shall prepare annually an IUP, including a PPL and a nonpoint source project list pursuant to the Clean Water Act, to be effective on the first day of the state's fiscal year.

(b) The following documents shall be included as appendices of the IUP and are subject to modification in accordance with this section:

(1) The PPL.

(2) A document describing the project ranking process.

(3) A list of nonpoint source projects.

(c) The department shall adopt an IUP after holding a public meeting on the plan and responding to substantial comments received. The department shall amend the IUP to add eligible projects or change or amend listed projects as necessary on a quarterly basis after pursuing a public notification process.

(d) Placement in the PPL shall be based upon on the following criteria:

(1) The project must be consistent with the PPL uses of the wastewater SRF as identified in the CWA and IC 4-23-21-5 *[IC 4-23-21 was repealed by P.L.1-1996, SECTION 99, effective July 1, 1999.]*.

(2) A political subdivision must submit general project information on an application form provided by the department that is signed by the political subdivision's authorized representative and includes relevant information as follows:

(A) A general description of the project.

(B) An appropriate cost estimate for different phases of the project.

(C) An estimated initiation date and completion date for each phase of the project.

*(Budget Agency; 85 IAC 1-4-2; filed Aug 28, 1998, 4:48 p.m.: 22 IR 9)*

**Rule 5. Program Standards**

**85 IAC 1-5-1 Criteria**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 1. Loans and other available SRF financial assistance shall be made only to a political subdivision that meets all of the following criteria:

(1) Owns, operates, and maintains, or causes to be operated and maintained, a treatment works for its useful life.

(2) Demonstrates financial, managerial, technical, and legal capability to meet the terms of the financial assistance agreement and to operate and maintain the treatment works for its useful life.

(3) Agrees to maintain financial records in accordance with generally accepted government accounting principles for utilities and to provide a copy of audits of the treatment work's financial records as conducted by the state board of accounts or other certified independent auditor during the term.

(4) Agrees to allow inspection by the agency of the financial records related to the treatment works during the term of the financial assistance agreement.

(5) Meets all other wastewater SRF program requirements.

*(Budget Agency; 85 IAC 1-5-1; filed Aug 28, 1998, 4:48 p.m.: 22 IR 10)*

**Rule 6. Due Diligence**

**85 IAC 1-6-1 Due diligence process**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 1. The due diligence process shall include the following tasks:

(1) The political subdivision shall submit a completed due diligence form issued or authorized by the agency with the required documentation.

(2) The agency shall review or cause to be reviewed the due diligence form and documentation and shall inform the political subdivision in writing of the determination.

*(Budget Agency; 85 IAC 1-6-1; filed Aug 28, 1998, 4:48 p.m.: 22 IR 10)*

**Rule 7. Preliminary Engineering Report**

**85 IAC 1-7-1 Purpose**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 1. It is the purpose of this rule to establish the preliminary engineering report procedures required for funding of treatment works from the wastewater SRF. The preliminary engineering report shall provide the information necessary for the department to determine the technical, economic, and environmental adequacy of the proposed treatment works. The preliminary engineering report must be approved by the department prior to award of financial assistance for construction. *(Budget Agency; 85 IAC 1-7-1; filed Aug 28, 1998, 4:48 p.m.: 22 IR 10)*

**85 IAC 1-7-2 Applicability**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 2. This rule shall apply to any political subdivision requesting financial assistance from the wastewater SRF program. *(Budget Agency; 85 IAC 1-7-2; filed Aug 28, 1998, 4:48 p.m.: 22 IR 10)*

**85 IAC 1-7-3 Project summary**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 3. The preliminary engineering report shall include a section that provides a brief summary of the proposed project and shall include the following:

(1) Project purpose, scope and schedule.

(2) Project cost estimates for construction and nonconstruction activities.

(3) All anticipated funding sources for the project.

(4) Legal description of the project area.

(5) Current population data and twenty (20) year projection.

(6) Current condition of facilities, current pollutant loadings and flows and twenty (20) year projection.

(7) The preliminary design summary with schematics, layouts, and maps for the affected and proposed treatment works.

(8) Sewer system studies, where appropriate, in order to establish that the system is not subject to excessive inflow and infiltration.

(9) The department may request additional information from a political subdivision that it deems necessary to complete a preliminary engineering report.

*(Budget Agency; 85 IAC 1-7-3; filed Aug 28, 1998, 4:48 p.m.: 22 IR 10)*



**85 IAC 1-7-4 Development of feasible alternatives**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 4. The preliminary engineering report shall contain a section identifying a range of feasible alternatives and shall include a description of all alternatives, including that of taking no action, that were evaluated during the planning process. The report shall include an evaluation of feasible alternatives and provide a rationale for the selection of the proposed alternative. (*Budget Agency; 85 IAC 1-7-4; filed Aug 28, 1998, 4:48 p.m.: 22 IR 10*)

**85 IAC 1-7-5 Environmental information**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 5. The preliminary engineering report shall contain the following:

- (1) A comparison of the potential environmental impacts among feasible alternatives, including that of doing nothing.
- (2) A basis for a determination to prepare either:
  - (A) an EA and FNSEI issued pursuant to 327 IAC 13-9-5 and 327 IAC 13-9-6; or
  - (B) an EIS, issued pursuant to 327 IAC 13-9-7, as the final environmental document.
- (3) An assessment of the cumulative environmental impacts of the feasible alternatives within each of the following categories:
  - (A) Soils and prime farmland.
  - (B) Air quality.
  - (C) Ground water, drinking water, and sole source aquifers.
  - (D) Floodplains, wetlands, waterways, and other surface waters.
  - (E) Plants and animals.
  - (F) Historical, architectural, and archaeological sites.
  - (G) Natural national landmarks.
  - (H) Coastal zones.
- (4) The environmental information shall include an evaluation of the environmental impacts of taking no action to modify, improve, or expand an existing treatment works, or to construct new treatment works.
- (5) Specific mitigation measures shall be listed, as necessary, that shall eliminate, minimize, or compensate for the environmental impacts described in subdivision (3).
- (6) If the construction of an approved project is initiated five (5) or more years after the date of approval of a preliminary engineering report, additional environmental information shall be required unless it is determined by the department that there have been no substantial changes in the environmental impacts of the project.
- (7) If a proposed project is to be completed in several distinct phases, the environmental information associated with the first phase must consider the cumulative impacts of the entire proposed system, including all succeeding phases. As succeeding phases are constructed, no additional environmental information shall be required if there have been no significant changes to the original preliminary engineering report.
- (8) If a project is to be constructed in a political subdivision that had a preliminary engineering report for a previous project approved by the department, the environmental information submitted with the previous project shall be evaluated by the department to determine if its scope and content encompassed the environmental impacts associated with the current project. Based on this evaluation, the political subdivision shall only be required to submit additional information if the department deems it necessary to complete the environmental review for the current project.

(*Budget Agency; 85 IAC 1-7-5; filed Aug 28, 1998, 4:48 p.m.: 22 IR 11*)

**85 IAC 1-7-6 Public participation**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 6. The preliminary engineering report shall include the following:

- (1) Copies of all written comments submitted by the public during the preliminary engineering process.
- (2) A transcript of the public hearing.
- (3) A mailing list of all individuals, industries, groups, and organizations that demonstrated an interest in receiving copies of the EA and FNSEI issued pursuant to 327 IAC 13-9-5 through 327 IAC 13-9-6.
- (4) A copy of the publisher's affidavit from the newspaper with the public hearing notice.

*(Budget Agency; 85 IAC 1-7-6; filed Aug 28, 1998, 4:48 p.m.: 22 IR 11)*

**85 IAC 1-7-7 Public hearings**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 7. At least one (1) public hearing shall be held prior to adoption of the preliminary engineering report by the political subdivision. The purpose of the public hearing shall be to discuss the preliminary engineering report. A copy of the preliminary engineering report shall be available to all attendees at the hearing. Requirements for the hearing shall include the following:

- (1) The public hearing shall be publicized in at least one (1) newspaper of general circulation in the study area a minimum of fourteen (14) days prior to the date of the hearing.
- (2) The preliminary engineering report shall be available for public review for a minimum of fourteen (14) days prior to the date of the public hearing.
- (3) Written comments shall be accepted during the hearing and for a period of ten (10) days following the hearing.
- (4) A sign up sheet shall be available for all individuals interested in receiving the EA and FNSEI at the public hearing.

*(Budget Agency; 85 IAC 1-7-7; filed Aug 28, 1998, 4:48 p.m.: 22 IR 11)*

**Rule 8. Environmental Impact Assessment**

**85 IAC 1-8-1 Purpose**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 1. It is the purpose of this rule to accomplish the following:

- (1) To establish the environmental impact assessment procedures required for political subdivisions seeking financial assistance for treatment works from the wastewater SRF.
- (2) To assure that the environmental impacts of all projects funded by the wastewater SRF be evaluated adequately prior to award of financial assistance.
- (3) To assure that the consideration of public comments is an integral component of the environmental impact assessment process.

*(Budget Agency; 85 IAC 1-8-1; filed Aug 28, 1998, 4:48 p.m.: 22 IR 12)*

**85 IAC 1-8-2 Applicability**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 2. This rule applies to any political subdivision requesting financial assistance for treatment works from the wastewater SRF program. *(Budget Agency; 85 IAC 1-8-2; filed Aug 28, 1998, 4:48 p.m.: 22 IR 12)*

**85 IAC 1-8-3 Categorical exemptions**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 3. (a) The following classes of projects may be categorically exempt from the requirements of this rule, except as

described in subsection (b):

(1) Minor addition, rehabilitation, improvement, or expansion of any existing treatment works that will disturb only previously disturbed land.

(2) Rehabilitation of sewer systems that will not result in the extension of the existing system and will disturb only previously disturbed land.

(b) If it is determined by the department that the construction or operation, or both, of any treatment works listed in subsection (a) may result in substantive environmental impacts, a categorical exemption shall not be granted, and the political subdivision shall prepare a preliminary engineering report under 327 IAC 13-7.

(c) A categorical exemption may be rescinded by the department if it is determined that information exists sufficient to suggest that substantive environmental impacts may occur as a result of the construction or operation, or both, of any treatment works included in a project that received a categorical exemption.

(d) All decisions to categorically exempt a project from the requirements of this rule, or to rescind a previously granted categorical exemption, shall be issued for public comments for thirty (30) days. The decision shall be considered final in the absence of significant public comments. If significant public comments are received during the comment period, the decision shall be reevaluated and a new decision, if appropriate, issued for public comments for thirty (30) days. (*Budget Agency; 85 IAC 1-8-3; filed Aug 28, 1998, 4:48 p.m.: 22 IR 12*)

#### **85 IAC 1-8-4 Environmental assessment**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 4. (a) The purpose of an EA shall be the following:

(1) To provide a description of all feasible treatment works alternatives.

(2) To document the potential environmental impacts of the feasible alternatives.

(3) To act as a public record of the information evaluated by the department.

(4) To provide information adequate for the public to evaluate the alternatives.

(b) The preparation of an EA shall be the responsibility of the department.

(c) The EA shall, at a minimum, include the following information:

(1) Project identification.

(2) System summary.

(3) System need and purpose.

(4) System description.

(5) Project costs, affordability, and funding.

(6) Evaluation of alternatives.

(7) Environmental impacts of the feasible alternatives.

(8) Mitigation measures.

(9) Public participation.

(d) The EA shall be provided as an attachment to the FNSEI document issued pursuant to section 5 of this rule. (*Budget Agency; 85 IAC 1-8-4; filed Aug 28, 1998, 4:48 p.m.: 22 IR 12*)

#### **85 IAC 1-8-5 Finding of no significant environmental impact**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 5. (a) The purpose of issuing a FNSEI shall be to notify the public that, based upon the department's evaluation of all pertinent information submitted in the preliminary engineering report and information submitted by state and federal agencies, the construction and operation of the proposed treatment works shall result in no significant adverse environmental impact.

(b) The FNSEI and attached EA shall be issued for public comments for thirty (30) days. If significant public comments are received during the public comment period, the FNSEI shall be reevaluated and a new FNSEI, if appropriate, issued for public comments for thirty (30) days.

(c) A final decision to proceed, or not to proceed, with the proposed project shall be issued by the department after all public comments have been evaluated. (*Budget Agency; 85 IAC 1-8-5; filed Aug 28, 1998, 4:48 p.m.: 22 IR 12*)

**85 IAC 1-8-6 Environmental impact statement**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 6. (a) The purpose, content, and format of an EIS shall be established under 327 IAC 11-2-3(b)(1) through 327 IAC 11-2-3(b)(2).

(b) The criteria for initiating an EIS shall be established under 40 CFR 6.108.

(c) The preparation of an EIS shall be the responsibility of the department.

(d) A ROD shall be prepared by the department upon completion of an EIS that shall include a determination of whether to proceed with the proposed project. The ROD shall contain specific mitigation measures that shall minimize, eliminate, or compensate for the environmental impacts of the construction or operation, or both, of the proposed facilities. The ROD shall be issued for public comments for thirty (30) days, and shall be considered final in the absence of significant public comments. If significant public comments are received during the comment period, the ROD shall be reevaluated and a new ROD, if appropriate, shall be issued for public comments for thirty (30) days. (*Budget Agency; 85 IAC 1-8-6; filed Aug 28, 1998, 4:48 p.m.: 22 IR 13*)

**Rule 9. Sewer Rate Ordinance; Interlocal Agreement**

**85 IAC 1-9-1 Approval rate study sewer rate ordinance**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 1. (a) Every political subdivision shall obtain the agency's approval of its sewer charge system as part of the due diligence process. If the political subdivision has a sewer charge system in effect, it shall demonstrate to the agency that it meets the requirements of this section and section 2 of this rule and that these requirements are being enforced.

(b) Each political subdivision shall establish rates and charges at a level adequate to produce and maintain sufficient revenue to properly operate and maintain the treatment works, and to repay all debt obligations of the treatment works. (*Budget Agency; 85 IAC 1-9-1; filed Aug 28, 1998, 4:48 p.m.: 22 IR 13*)

**85 IAC 1-9-2 Interlocal agreement**

Authority: IC 13-18-13

Affected: IC 13-11-2; IC 36-7-23

Sec. 2. If the project will serve two (2) or more political subdivisions, the political subdivision shall submit an interlocal service agreement, contract, or other legally binding instrument necessary for the financing, construction, operation, and maintenance of the proposed treatment works project for approval by the agency. If the political subdivision is a multicounty infrastructure authority under IC 36-7-23, the agency may require similar documentation and assurances. (*Budget Agency; 85 IAC 1-9-2; filed Aug 28, 1998, 4:48 p.m.: 22 IR 13*)

**Rule 10. Procurement**

**85 IAC 1-10-1 Professional services**

Authority: IC 13-18-13

Affected: IC 5-16-11.1; IC 13-11-2

Sec. 1. Political subdivisions conducting procurement for the uses authorized by the wastewater SRF for professional services shall proceed pursuant to IC 5-16-11.1. (*Budget Agency; 85 IAC 1-10-1; filed Aug 28, 1998, 4:48 p.m.: 22 IR 13*)

**85 IAC 1-10-2 Procurement**

Authority: IC 13-18-13

Affected: IC 13-11-2; IC 36-1-12

Sec. 2. Political subdivisions conducting procurement for the uses authorized by the wastewater SRF for any activity other than professional services shall proceed pursuant to IC 36-1-12. (*Budget Agency; 85 IAC 1-10-2; filed Aug 28, 1998, 4:48 p.m.: 22 IR 13*)

**85 IAC 1-10-3 Small, minority, and women's business enterprises**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 3. The political subdivision shall take all necessary affirmative steps to assure that small, minority, and women's business enterprises are used when possible. Affirmative steps shall include taking the following actions for all of these three (3) types of enterprises:

- (1) Placing qualified enterprises on solicitation lists.
- (2) Assuring that these enterprises are solicited whenever they are potential sources.
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by these enterprises.
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by these enterprises.
- (5) Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in this section.

(*Budget Agency; 85 IAC 1-10-3; filed Aug 28, 1998, 4:48 p.m.: 22 IR 13*)

**Rule 11. Construction**

**85 IAC 1-11-1 Construction permit**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 1. (a) The political subdivisions must obtain a construction permit from the department in accordance with 327 IAC 3-2-3 in conjunction with the approved preliminary engineering report prior to contract award approval.

(b) The political subdivision must receive authorization from the department prior to initiating procurement for construction. (*Budget Agency; 85 IAC 1-11-1; filed Aug 28, 1998, 4:48 p.m.: 22 IR 14*)

**85 IAC 1-11-2 Acquisition of land, easements, and existing facilities**

Authority: IC 13-18-13

Affected: IC 13-11-2; IC 32-11

Sec. 2. The political subdivision is responsible for acquisition of land, easements, and any existing facilities necessary to construct, operate, and maintain the project. Prior to the issuance of a construction permit by the department, the political subdivision shall provide evidence that it has, or will have or by a mutually agreeable date, the required property rights. All acquisitions of property by exercise of power of eminent domain shall comply with the procedure in IC 32-11 or other applicable law. (*Budget Agency; 85 IAC 1-11-2; filed Aug 28, 1998, 4:48 p.m.: 22 IR 14*)

**85 IAC 1-11-3 Bid tabulations**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 3. Certified bid tabulations and recommendations of award shall be submitted to the department for review and approval prior to construction contract award. *(Budget Agency; 85 IAC 1-11-3; filed Aug 28, 1998, 4:48 p.m.: 22 IR 14)*

**85 IAC 1-11-4 Contract information submittal**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 4. Following the department's approval of the proposed award, each political subdivision shall provide copies of the following to the department:

- (1) Executed contracts.
- (2) Notices to contractors to proceed.
- (3) Bid bonds.
- (4) Performance and payment bonds.
- (5) Construction schedules.

*(Budget Agency; 85 IAC 1-11-4; filed Aug 28, 1998, 4:48 p.m.: 22 IR 14)*

**85 IAC 1-11-5 Construction wage rates**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 5. Wages paid for the construction of treatment works shall conform to the prevailing wage rates established for the political subdivision's locality by the U.S. Department of Labor under the Davis-Bacon Act, 40 U.S.C. 276a. *(Budget Agency; 85 IAC 1-11-5; filed Aug 28, 1998, 4:48 p.m.: 22 IR 14)*

**85 IAC 1-11-6 Change orders**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 6. The political subdivision shall submit copies of each change order to the department. Change orders which:

- (1) significantly change the scope or design of the project; or
- (2) increase the amount of financing needed for the project;

require the prior approval of the department and agency before the work is authorized by the political subdivision. If the change order will result in the expenditure of more wastewater SRF funds than the current amount of financial assistance approved by the agency, an amendment increasing the amount of assistance must be executed prior to the implementation of the changes. Any additional financial assistance shall comply with existing law as to the borrowing power of the political subdivision. *(Budget Agency; 85 IAC 1-11-6; filed Aug 28, 1998, 4:48 p.m.: 22 IR 14)*

**85 IAC 1-11-7 Inspections**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 7. The inspections shall proceed as follows:

- (1) During the construction of the project, the political subdivision shall provide continuous inspection by qualified inspectors in sufficient numbers to ensure that the construction complies with department approved plans and specifications and the terms and conditions of the contract.
- (2) The inspectors shall maintain logs, written in ink, with entries sufficient to establish the amount and quality of work completed by the contractor including weather conditions and problems encountered.
- (3) The department shall conduct construction inspections to determine compliance with department approved plans and specifications. Inspections performed by the department are not made to replace the political subdivision's responsibility to properly monitor the construction of its project, but are made solely to protect the department's and agency's financial interest

in the project.

(4) The political subdivision, shall conduct a pre-final inspection making a punch list of incomplete and unacceptable work to be corrected before final inspection.

(5) The political subdivision shall notify the department, after the prefinal inspection has been done and all punch list items have been corrected or agreed to be corrected, to set up a final inspection to be made by the department to determine the date of substantial completion.

*(Budget Agency; 85 IAC 1-11-7; filed Aug 28, 1998, 4:48 p.m.: 22 IR 14)*

**85 IAC 1-11-8 As-built plans**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 8. After completion of the project, the political subdivision shall obtain as-built plans for the project from its engineer and provide the plans to the department. *(Budget Agency; 85 IAC 1-11-8; filed Aug 28, 1998, 4:48 p.m.: 22 IR 15)*

**Rule 12. Disbursement of Loan Proceeds**

**85 IAC 1-12-1 Disbursement process**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 1. The loan proceeds shall be disbursed as follows:

(1) The department shall review and certify the wastewater SRF loan share of the appropriate costs incurred for the project. These costs shall be documented as requested by the department in the political subdivision's most recent invoice statement. The agency shall pay these costs in accordance with state disbursement procedures.

(2) Multiple disbursements of the loan proceeds shall be made by the agency on the basis of incurred costs during the construction of the project with the first disbursement made at financial assistance closing. Succeeding disbursements shall normally be made monthly until construction completion or until all proceeds of the loan have been disbursed. Interest shall commence on the day funds are disbursed to the political subdivision for that disbursement only or to third parties on behalf of the political subdivision.

(3) The political subdivision shall approve the project costs for payment prior to disbursement of the proceeds.

(4) Loan proceeds disbursed to or on behalf of the political subdivision shall be used only for authorized purposes. Funds shall not be disbursed to pay costs associated with a contract change order that authorized a significant change in project scope or design, or both, prior to concurrence by the department and the agency.

(5) The department and the agency may at any time review and audit requests for loan disbursements and make adjustments for circumstances, including, but not limited to the following:

(A) Mathematical errors.

(B) Items not bought or built.

(C) Unacceptable construction.

(6) By its acceptance of the final loan disbursement, the political subdivision releases and discharges the department and agency its officers, agents, and employees from all liabilities, obligations, and claims arising out of the disbursement of loan proceeds, subject only to exceptions previously specified contractually in writing between the department and the political subdivision.

(7) All files and records pertaining to the project shall be maintained by the political subdivision throughout the project and made accessible to the department and agency. These files and records shall be retained by the political subdivision for at least six (6) years after initiation of operation as determined by the department and agency. However, if any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the six (6) year period, the records shall be retained until completion of the action and resolution of all issues that arise from it or until the end of the regular six (6) year period, whichever is later.

*(Budget Agency; 85 IAC 1-12-1; filed Aug 28, 1998, 4:48 p.m.: 22 IR 15)*

**Rule 13. Reservation of Rights**

**85 IAC 1-13-1 "Rights" defined**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 1. The following rights are reserved:

(1) Nothing in this article prohibits a political subdivision from requiring more assurances, guarantees, or indemnity, or other contractual requirements from any party performing work on the project.

(2) Nothing in this article affects the department's and the agency's right under existing rules to take remedial action, including, but not limited to, administrative enforcement action and actions for breach of contract against a political subdivision that fails to carry out its obligations under this article.

(3) Review or approval of any document by or for the department does not relieve the political subdivision of its responsibility to properly plan, design, build, and effectively operate and maintain the treatment works as required by federal and state statutes, rules, regulations, permits, and best management practice. The department is not responsible for increased costs resulting from defects in the plans, design drawings, specifications, inspections, construction, or other subagreement documents related to the project.

*(Budget Agency; 85 IAC 1-13-1; filed Aug 28, 1998, 4:48 p.m.: 22 IR 15)*

**Rule 14. Rights of Review**

**85 IAC 1-14-1 Review procedures**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 1. A political subdivision whose financial assistance application is denied, or disputes the terms contained in the financial assistance agreement, or whose preliminary engineering report or any provisions of its preliminary engineering report as defined in 85 IAC 1-7-3 is rejected may request a special review. The department and the agency shall conduct the review and make a determination. If further review is requested, the political subdivision may present its case to the department and the agency. The department and the agency shall make a recommendation to the agency director, whose decision is final. *(Budget Agency; 85 IAC 1-14-1; filed Aug 28, 1998, 4:48 p.m.: 22 IR 16)*

**Rule 15. Hardship Grant Program**

**85 IAC 1-15-1 Purpose**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 1. The hardship grant (HG) program established by the EPA shall accomplish the following:

(1) Facilitate statewide compliance with state and federal water quality standards through construction of treatment works.

(2) Provide rural communities considered to be economically disadvantaged, based on per capita income and local unemployment rate, financial assistance for the planning, design, and construction of publicly owned treatment works and alternative wastewater treatment systems.

*(Budget Agency; 85 IAC 1-15-1; filed Aug 28, 1998, 4:48 p.m.: 22 IR 16)*

**85 IAC 1-15-2 Administration**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 2. The department will administer the hardship grant program in conjunction with the wastewater SRF program in



accordance with the following:

- (1) All communities seeking hardship grant assistance must apply for a wastewater SRF loan. The department shall determine the proportion of wastewater SRF loan funds and hardship grant assistance grants.
- (2) The loan amount must account for at least fifteen percent (15%) of the wastewater SRF eligible cost of the project before it will be considered as an wastewater SRF project.
- (3) If a qualifying community cannot afford a loan for at least fifteen percent (15%) of a project's wastewater SRF eligible cost, the department may elect to provide hardship grant assistance alone.
- (4) The department shall enter into commitments to provide hardship grant assistance to benefit qualifying communities in an amount equaling one hundred five percent (105%) of the amount of the hardship grant, within one (1) year of funding availability.
- (5) The department shall provide a five percent (5%) match for the grant. The source of the match must be identified on or before the date the federal grant is awarded.
- (6) All projects that the department intends to provide hardship grant assistance must appear in the wastewater SRF intended use plan.

*(Budget Agency; 85 IAC 1-15-2; filed Aug 28, 1998, 4:48 p.m.: 22 IR 16)*

#### **85 IAC 1-15-3 Qualifying communities**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 3. To qualify for hardship grant assistance, the communities shall meet the following conditions:

- (1) Shall not be served by any sewage collection or wastewater treatment system.
- (2) Shall have a population of three thousand (3,000) or fewer.
- (3) Is not a remote area within the corporate boundaries of the community.
- (4) Per capita annual income of residents served by the project does not exceed eighty percent (80%) of national, per capita income.
- (5) On the date the community applies for assistance, the local unemployment rate exceeds by one (1) percentage point or more the most recently reported, average yearly national unemployment rate.

*(Budget Agency; 85 IAC 1-15-3; filed Aug 28, 1998, 4:48 p.m.: 22 IR 16)*

#### **85 IAC 1-15-4 Eligible projects**

Authority: IC 13-18-13

Affected: IC 13-11-2

Sec. 4. The following types of projects are eligible for hardship grant assistance:

- (1) Planning, design, and construction of publicly owned treatment works and alternate treatment systems.
- (2) Technical assistance, training, and educational programs relating to the operation and maintenance of sanitary services.

*(Budget Agency; 85 IAC 1-15-4; filed Aug 28, 1998, 4:48 p.m.: 22 IR 16)*

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